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Summary record of the 43rd meeting
Held at the Palais des Nations, Geneva, on Wednesday, 3 October 2018, at 10 a.m.

Chair: Ms. Bras Gomes

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The meeting was called to order at 10.05 a.m.

Consideration of reports

(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant (*continued*)

Initial report of South Africa (*continued*) (E/C.12/ZAF/1; E/C.12/ZAF/Q/1 and E/C.12/ZAF/Q/1/Add.1)

1. *At the invitation of the Chair, the delegation of South Africa took places at the Committee table.*

2. **Mr. Letoaba** (South Africa) said that the labour legislation in force covered all workers, irrespective of their status. The Government had instituted a range of initiatives designed to address the high unemployment rate. Thematic discussions had taken place that would feed into the recommendations to be formulated at the Jobs Summit scheduled for October 2018. Other initiatives included the expanded public works programme and the youth employment programme, both of which were designed to get more young people into work. South Africa was also involved in the Global Apprenticeship Network, and there were apprenticeship and internship schemes in operation in the country to help young people gain work experience. The Department of Trade and Industry supported small- and medium-sized cooperative enterprises set up by young people, offering them grants and mentoring. The Black Industrialist Programme promoted employment among population groups that had historically been marginalized, and the Department of Labour provided training opportunities for young people and helped to match their skills to available posts. Funding for training was channelled through the Sector Education and Training Authorities. The Department of Labour also hosted job fairs to link up young people with prospective employers and training providers.

3. The Employment Equity Act protected persons with disabilities against discrimination in the workplace. Public and private employers were obliged to implement affirmative action measures for such persons and to submit annual employment equity reports. Great progress had been made in the employment of persons with disabilities in the public sector, and the focus was now turning to more meaningful engagement in the private sector.

4. Under the Employment Services Act, temporary employment agencies were obliged to register with the authorities and display their registration certificate prominently at their premises. They were prohibited from charging jobseekers for using their services. If jobseekers encountered problems with an agency, they could report their concerns directly to the Department of Labour. Amendments to the Labour Relations Act had been designed to prevent workers from being exploited and to protect their right to social protection through the introduction of a ban on back-to-back temporary contracts. Any person employed for longer than three months was now considered a permanent employee.

5. Persons employing domestic workers, the majority of whom were women, were obliged to register them with the unemployment insurance fund to ensure that they would be eligible for temporary financial support should they lose their job. The Government was in the process of amending the legislation regulating the Compensation Fund in order to include domestic workers in the Fund's remit.

6. Labour inspectors had the right to inspect any public- or private-sector workplace, including farms, without notice. However, since the Constitution protected the right to privacy, inspections of private homes where domestic workers were employed had to be carried out by prior arrangement. If problems had been identified in a particular sector or if an employee had reported specific concerns, inspectors were required to carry out visits to address those issues. Employers were then given time to put corrective measures in place. There were approximately 1,000 labour inspectors working in the country; the austerity measures in place meant that it had not been possible to increase their number.

7. Following the decision to introduce a national minimum wage, an advisory panel had been established to determine the level at which it would be set. The panel had

considered submissions from a range of sectors and settled on a starting point of 20 South African rand per hour. The Government acknowledged that that amount was too low; however, it would be adjusted annually and would cover all sectors and both the formal and informal economy.

8. The Government was engaging with the issue of equal pay for work of equal value at both the national and international level. It was represented at the Equal Pay International Coalition, where ideas and best practices were shared.

9. The National Economic Development and Labour Council provided funding to trade unions to help them expand their membership base.

10. The Global Commission on the Future of Work had been established by the International Labour Organization (ILO) to examine the future of work and address the challenges that threatened to undermine the progress that had been made to date. The report of the 28-member Commission, which was co-chaired by the President of South Africa, would contain measures intended to address the decent work deficit globally and to help developing countries support each other in facing the challenges in that area.

11. **Mr. Van Vrede** (South Africa) said that, although social security expenditure appeared to have declined over the past 10 years, it had in fact remained flat. The amount budgeted had remained broadly the same, but fluctuations in gross domestic product (GDP) meant that its size as a percentage of GDP had shrunk. Social security spending as a share of total government expenditure had declined slightly because the policies underpinning it had not been updated since 2009.

12. Social grants were a very important instrument in the redistribution of wealth, since poverty was generally divided along racial lines. The Government had proposed two major social security reforms, namely the introduction of national health insurance, and the establishment of a comprehensive social security forum to deal with pensions, unemployment benefits and income support.

13. When it had been introduced in 1998, the child support grant had been allocated for children up the age of 7 years and had been set at the subsistence level necessary for a young child. The grant had since been extended to cover all children up to the age of 18 years. Although the Government recognized that the amount of the grant should be increased, there was not currently the fiscal space to be able to do so. Any increase would have to be instituted progressively. In 2018, general inflation had stood at 4.9 per cent and food inflation at 2.9 per cent, while the amount of the grant had been raised by 6.6 per cent. A bill had been tabled before parliament that would empower the Minister of Social Development and the Minister of Finance to determine categories of children who would qualify for higher rates of the child support grant; once the bill passed, orphans would receive a top-up of 50 per cent.

14. Under the National Development Plan, a social protection floor would be established by 2030. Efforts were already under way in that respect, through the provision of social grants, free primary health care and free basic education. The National Planning Commission had been tasked with making recommendations on how to consolidate the social protection floor and codify guarantees in areas such as housing subsidies. That work was expected to be delivered by the end of 2019.

15. With regard to the misuse of data and bank accounts belonging to social grant recipients, the Government had complied with the court ruling to take back control of the administration of the social grants payment system. It had learned important lessons regarding procurement and administrative processes. South Africa Post Office, which was a government agency, had now taken over payment operations and all related data were now under government control. Beneficiaries' Post Office accounts were ring-fenced and no unlawful deductions could be made from them. In September 2018, the Supreme Court had ruled that the Government had a duty to protect social grant monies. Regulation was needed in that respect and the Department of Social Development was working with the National Treasury and the South African Reserve Bank to explore options.

16. **Mr. Landers** (South Africa) said that, as part of efforts to recognize the specific vulnerabilities faced by women in the mining sector, including in connection with health

and safety matters, childcare and exploitation, the third iteration of the Mining Charter had been gazetted in September 2018. The Charter included specific provisions aimed at mining companies owned or controlled by women. Such companies were required to have a minimum equity partnership of 5 per cent in new mining rights. The Charter also provided for free carried interest of 5 per cent for communities and a further 5 per cent for mine workers. Other provisions in the Charter covered economic mainstreaming in procurement, employment and training procedures.

17. The issue of the obligations of the extractive industries towards communities was a sensitive and important one, and the Department of Mineral Resources was undertaking a robust consultation process to identify mechanisms that would strengthen community participation. It had also piloted a cooperative approach to small-scale mining in a bid to legitimize unlicensed, subsistence and artisanal miners; areas in which women were overrepresented. The Department of Mineral Resources was working on guidelines and best practices for the development and dissemination of measures to promote the safety and dignity of women in the mining sector through the tripartite Mine Health and Safety Council. The Government recognized that it had often failed to protect the health and safety of mine workers. The Department of Mineral Resources was partnering with the Mine Health and Safety Council to host the Mine Health and Safety Summit in November 2018. The aim of the Summit was to review all issues relating to the Road to Zero Harm initiative that was in place for the mining sector. Just one mine worker killed or injured was one too many.

18. **Mr. Jeffery** (South Africa) said that, in accordance with the 1993 Regulation of Gatherings Act, everyone in South Africa had the rights to assemble, demonstrate, picket and present petitions. The Act required the organizers of gatherings to give notice, while municipalities were required to designate an official to engage with the organizers; the designated official could prohibit the gathering if he or she believed that it posed a danger to the public. The police did not have that power and would have to approach a magistrate if they wanted to ban a gathering; such restrictions could be challenged in the courts. In a recent case, the Western Cape High Court had ruled that the section of the Act that made it a criminal offence not to give notice was invalid and unconstitutional, considering that other measures, such as civil liability proceedings, could be taken against organizers. The case had since been referred to the Constitutional Court. In short, it was easy to hold a gathering and criminal prosecutions only ensued when there was damage to property.

19. The legality of sex work was a major policy issue that attracted many different views. The South African Law Reform Commission had investigated the issue and published a report that had largely recommended the continued criminalization of sex work, along with non-legislative measures such as monitoring of human rights violations perpetrated against sex workers. Conversely, the Sex Workers Education and Advocacy Taskforce was strongly in favour of decriminalization and a substantial lobby advocated the Swedish model of partial decriminalization. The Government was consulting with all stakeholders, including sex workers, and hoped that the issue would be comprehensively addressed after the elections scheduled for 2019.

20. **Ms. Shin**, recalling that the Swedish model criminalized the purchase but not the sale of sex, recognizing that sex workers often acted out of necessity, suggested that South Africa should have a national discussion on how to curb demand and combat the exploitation of women by traffickers, establishment owners and others, with a view to eventually decriminalizing the sale of sex.

21. Considering that in South Africa unequal pay might have a racial as well as a gender dimension, and that the problem was compounded by the non-disclosure of information on pay, she asked whether the realization of equal remuneration for work of equal value was on the Government's agenda and what steps it planned to take to tackle vertical and horizontal job segregation and to realize equal remuneration for work of equal value.

22. **Mr. Windfuhr** (Country Task Force) said that most of the State party's social security policies appeared to be directed at children, young people and older persons, but it was unclear what assistance was provided for persons aged 18 to 59 years who were not in employment. Regarding the right to protest, he asked the delegation to respond to

allegations of arbitrary restrictions on the freedom of assembly of trade unions, including the claim that two thirds of applications to hold gatherings were rejected. He was interested to know whether the labour inspections regime was strong enough in terms of enforcement. Considering that the Global Commission on the Future of Work was looking into the impact of artificial intelligence and digitalization, which might entail the loss of unskilled jobs, he wondered whether the Government had reflected on how to deal with such challenges. The delegation might also like to comment on what was being done to address the difficult living conditions of mine workers in terms of housing and access to water and sanitation.

23. **Mr. Kedzia**, recalling that high staff turnover had led to a shortage of qualified labour inspectors, said he was concerned at the suggestion in a 2016 ILO report that funding for measures to address the problem had not been allocated. Had the problem since been rectified?

24. The Committee would like to know if adjustments to the national minimum wage were made on a regular or an ad hoc basis. Given that the International Monetary Fund predicted that inflation would hold steady at about 5.5 per cent in subsequent years, he wondered whether the national minimum wage was adjusted in line with the inflation rate.

25. Notwithstanding the statement that progress had been made in addressing strike-related intimidation, the Committee was concerned about the reported persistence of violent incidents resulting from police intervention during strike actions, and would welcome updated information in that regard. Information might also be provided on whether and at what stage of the legislative process the proposed amendments to the Labour Relations Act, which could restrict the right to strike by requiring unions to hold secret ballots, were being considered.

26. **Mr. Sadi** (Country Task Force) said that he would like the delegation to provide a direct answer on whether prostitution was lawful in the State party.

27. **Mr. De Schutter** (Country Rapporteur) said he understood that the Government was concerned about its fiscal space; however, economic research had shown that investing in the social rights of children could yield very positive returns. Since the public debt of South Africa was quite sustainable and was lower in GDP terms than that of many developed countries, he believed fiscal space was a consideration that should not be given too much weight in deciding the level at which to set the child support grant.

28. While noting that the Employment Equity Act set forth reasonable accommodation requirements for employers of persons with disabilities, the Committee would be grateful for some indication of whether a recruitment quota was applied in the public and private sectors. Did employers who took reasonable accommodation measures receive any financial support?

29. The fact that farms were vast and located in remote areas meant that employers could easily conceal violations, unannounced inspections were difficult to perform and farm workers who complained of labour violations — especially undocumented workers and migrants — might be at risk of reprisals. He asked how the Government might overcome those obstacles in order to protect workers who complained about labour conditions and whether safeguards might be introduced that encouraged workers to carry out the monitoring function that labour inspectors were unable to perform effectively.

30. The Committee was interested to know what was being done to address the low take-up of the child support grant and to remove the bureaucratic hurdles that made it difficult for poor families to collect the grant. Lastly, he wondered how the Government calculated the level of the national minimum wage, unemployment benefits and the child support grant, and whether South Africa had a mechanism for adequately determining the cost of living.

31. **The Chair** said that she would appreciate clarification on whether the Government's efforts to establish a social protection floor were aligned with the rights-based definition provided in the ILO Social Protection Floors Recommendation, 2012 (No. 202). Considering that wide-ranging systems of non-contributory benefits involved complex procedures and administrative burdens and were open to abuse, she invited the State party

to explain its position on the possible introduction of a universal basic income. She asked whether having a composite index on an adequate standard of living, which had been raised in the Committee's discussions with the South African Human Rights Commission, would allow the country to identify gaps in the social protection system.

32. **Mr. Jeffery** (South Africa) said he wished to emphasize that permission was not needed to organize a public gathering. He did not know the source of the information that two thirds of gatherings had been prohibited, although it was conceivable that mining companies had prevented workers from holding gatherings on private property. In respect of the mining industry, the recommendations of the Marikana Commission of Inquiry were being implemented and most, if not all, of the families of the deceased miners had been paid compensation.

33. The State party's Constitution stated that South Africa was founded on the value of equality. "Equality courts" had already been designated and regional courts would soon be able to deal with violations of equality. The fact that wages were determined on the basis of salary received in previous employment meant that persons from historically privileged groups continued to earn more money than persons from other groups with the same qualifications. Such problems might be referred to the Labour Court, although successful outcomes would require proof of inequality, which was difficult to obtain. The Constitution provided for the right to strike, and therefore any restrictions introduced through amendments to the Labour Relations Act would have to be justifiable.

34. The buying and selling of sex was currently illegal; there were also restrictions on soliciting and loitering under municipal bylaws. The Government was giving the matter due consideration and recognized that the most vulnerable people must be protected. In 2017, the ruling party, the African National Congress, had resolved to organize a high-level discussion with all stakeholders on the decriminalization of sex work. However, the nature of the industry meant that sex workers would continue to be vulnerable even in the event of decriminalization.

35. **Mr. Van Vrede** (South Africa) said that the National Economic Development and Labour Council had drafted a comprehensive paper on social reform and was examining income support for people aged from 18 to 59 years. It was likely that the National Planning Commission would favour the introduction of an unemployment grant for a two-year period for those who were out of work or had never worked. While social partners had tabled a number of proposals, including one for a universal basic income grant, the Government believed that dismantling a well-established, functioning system of benefits in favour of a consolidated grant would prove difficult and unpopular, considering that it would necessitate changes in the amounts provided and the introduction of top-up grants.

36. The Government would welcome any recommendation on raising the child support grant; however, it was also bound to consider the advice provided by the International Monetary Fund, given that the country's credit rating had been downgraded owing to the level of the national debt. It was true that not all of the eligible population received the child support grant, particularly in respect of children under 2 years of age. Although take-up had improved in respect of the younger age groups in rural areas, the challenge in urban areas was that people in work were not aware that they nonetheless qualified for the grant.

37. He believed that the Government was moving towards adopting the definition of a social protection floor proposed by ILO. In 2018, the Government had partnered with an academic institution to develop a standard-of-living index. However, the initial results of the initiative had proved unsatisfactory and the National Planning Commission had asked the academic partner to refine its approach.

38. **Mr. Letoaba** (South Africa) said that the Labour Inspectorate actively engaged with companies to ensure that they complied with national employment regulations. Fines were issued as a last resort. Although it was true that financial constraints had hampered the creation of new labour inspector posts, there was enough flexibility in the budget to make adjustments and recruit more staff where necessary. There had been cases of labour inspectors leaving the public sector to join private companies. While the Government could not stop public officials from making that decision, it had invested in training and other incentives to encourage them to stay.

39. Although farm access remained a pervasive issue, only a few farmers took the decision to restrict access to their lands. In such cases, the relevant national authorities visited the farm to discuss the matter and find suitable solutions. Mobile protection units had been introduced to tackle reprisals against farm workers and leaflets on workers' rights had been published in the local language.

40. The Department of Labour regularly consulted with employers and trade unions with a view to improving working conditions in all employment sectors. Efforts were also made to obtain the views of employees on their workplace during labour inspections. The Government remained committed to the principle of equal pay for work of equal value and held regular intersectoral consultations and discussions on that topic. It also worked closely with private companies to ensure that they adhered to the national employment quota for persons with disabilities. Following the recent introduction of the minimum wage, a panel had been established to monitor the implementation process. It would also be responsible for making the necessary annual adjustments.

41. **Mr. Jeffery** (South Africa) said that the process of applying for a child support grant had been simplified in response to the slow uptake of the scheme. Eligible families now had only to complete a short form and submit their child's birth certificate in order to obtain the relevant financial support.

42. **Mr. Mkhize** (South Africa) said that the Government had streamlined the birth registration process by issuing birth certificates free of charge in hospitals. It had also made mobile birth registration units available in remote and rural areas. Those improvements, together with the inclusion of the names and personal details of both parents on the birth certificate, had facilitated the process of applying for a child support grant and had reduced the number of ineligible claims.

43. **Mr. Sadi** said that he would like to know more about the legacy of apartheid and the current status of race relations in the country, including whether the number of interracial marriages had increased in the post-apartheid era. In view of the high prevalence of domestic violence despite the introduction of various prevention programmes, he wondered what steps had been taken to address the root causes of such behaviour. He would also appreciate clarification on the minimum age for marriage, given the discrepancies between the Recognition of Customary Marriages Act, of 1998, and the Marriage Act, of 1961. It would be particularly interesting to learn why the Marriage Act set the minimum age for marriage at 15 for girls and 18 for boys. The delegation's comments on the consequences of the lack of recognition of Muslim marriages under the Act would also be welcome.

44. He was concerned at the funding and resource gap between the public and private health-care systems, and wished to know more about the steps taken to rectify the situation, including the status of the national health insurance scheme referred to in paragraph 120 of the report.

45. Concerning nutrition and the right to food, he wondered whether instructions to avoid the use of carcinogenic pesticides had been included in the food security training provided to farmers and whether any national awareness-raising campaigns on the dangers of genetically modified foods had been launched.

46. Welcoming the notable improvements in living standards between 1996 and 2014, he wondered whether the large number of new dwellings in urban areas met the minimum acceptable housing standards. Further information regarding the positive and negative impacts of rural migration to urban areas would be particularly useful in that context.

47. Noting the rising breastfeeding rate, he wished to know what measures had acted as the catalyst for such progress. He also requested further clarification of the provisions of the Choice on Termination of Pregnancy Act governing the time restrictions for carrying out abortions. Lastly, he asked whether persons with HIV/AIDS had access to chronic opioid therapy for pain, where necessary.

48. **Mr. Abdel-Moneim**, noting the information provided in paragraphs 96 to 114 of the report on the right to an adequate standard of living, said that careful attention should be paid to interpreting article 11 of the Covenant in conjunction with articles 7 and 12. For example, indirect taxation on consumer goods and services had a significant impact on

living standards. Had the Government considered introducing subsidies for those goods and services? Further information regarding the consumer price index would also be useful in that context.

49. Concerning the right to health, he wished to know what policies and regulations had been put in place to mitigate the potential health risks of nuclear radiation at the national nuclear power plant following health and safety concerns voiced by employees.

50. **Mr. De Schutter** said that he would like to know whether the Government intended to amend the Marriage Act and repeal the provisions establishing differential treatment between men and women. He also wished to know what action had been taken to uphold the Western Cape High Court's judgment ordering the introduction of legislation to govern Muslim marriages.

51. In view of the fact that 10 per cent of children remained unregistered, he asked whether the Government would consider waiving the fees for late birth registration, reimbursing the costs of proof of paternity tests for children with one or more foreign parents, and decentralizing the birth registration service. It would also be interesting to hear whether the Government intended to apply section 4 (3) of the Citizenship Amendment Act to all children of foreign nationals, including those born before the Act came into force in 2013.

52. In the light of the recent resurgence in the abduction and forced marriage of young girls (*ukuthwala*) in the Eastern Cape and KwaZulu-Natal provinces, he wondered what measures had been taken to combat such harmful practices. He would also welcome further information on the steps taken to prohibit virginity testing following the "maiden's bursary" scandal in the KwaZulu-Natal province, which had involved young women being awarded university scholarships provided that they remained virgins.

53. Addressing the right to an adequate standard of living, he noted that farm dwellers benefited from a certain amount of protection under the Extension of Security of Tenure Act. However, that law, which was already over 20 years old, incentivized landowners to reduce the quality of their farms' infrastructure and to hire agricultural workers on short-term contracts in order to circumvent the requirement to provide them with benefits, in a practice known as "pre-emptive eviction". Attempts had previously been made to update the Act, and a new bill was currently under consideration to amend it. It would allow evictions only if suitable alternative accommodation was provided, institutionalize the use of mediation and strengthen judicial protections under the law. The Committee would like to know if the concept of suitable alternative accommodation in the new bill would be in line with the its general comment No. 4 (1991) on the right to adequate housing and whether the phenomenon of pre-emptive eviction would be addressed by the new legislation. He noted further that the South African Human Rights Commission had expressed concern about the reported use of excessive force in evictions and the lack of training for persons carrying out evictions, as well as the failure on the part of municipalities to provide adequate alternative accommodation when evictions took place.

54. Land redistribution and the restitution of lands expropriated since 1913 had been on the Government's agenda for some 25 years. The original goal had been to redistribute 30 per cent of land held by white commercial farmers by 2014, but so far less than 10 per cent had been redistributed. Concentration of holdings had actually increased, as a large number of white farmers had left farming. In addition, there had reportedly been insufficient support for many of the beneficiaries of the redistribution. The support programmes tended to benefit black commercial farmers with large holdings, and left small-scale farmers without support. A parliamentary panel had highlighted corruption and mismanagement in the programmes. In the redistribution and support programmes, the Government had apparently chosen to support large commercial agricultural enterprises that provided raw materials for the food-processing industry and sold their products to large markets, rather than supporting local, small-scale farmers and food self-sufficiency at the regional level. How had the discussion and identification of beneficiaries taken place? A debate was currently being held about the means of providing for the expropriation of land and provision of assistance to small-scale farmers. Had such considerations been raised in that

debate? Acquisition of land represented about a third of the cost of a new farm; clearly, other forms of support were required as well.

55. South Africa currently lacked a specific law on food security and the right to food. Such a law could improve coordination among food security programmes, set clear targets and allocate responsibilities among government ministries. Were there plans to adopt such a law?

56. Noting that a national health insurance bill was currently being adopted, he asked how the system that it would establish would be funded, and whether it would benefit poor families. The Committee had heard that the bill would require users to register with the National Health Insurance Fund at an accredited facility, but such facilities were lacking in underserved rural areas. Did the authorities have a plan to ensure coverage for people in such areas? Would the bill institute a system founded on a rights-based approach, for example by transparently specifying information on entitlements and providing remedies and claims mechanisms in the event of a denial of service? In August 2018, the High Court in Pretoria had ordered government ministries to develop an intersectoral policy and implementation plan to remove barriers faced by children with mental disabilities or behavioural difficulties in accessing education, health care and other social services. The Committee would like to know how the Government would implement that ruling. Access to abortion services was reportedly severely hampered by medical personnel invoking conscientious objection as a reason for not providing them. The Committee's position was that it was for the State to regulate its health policies to ensure that they did not inhibit access to sexual and reproductive health care, including by requiring doctors to refer patients to accessible providers. Was that the case in South Africa?

57. **Ms. Mxakato-Diseko** (South Africa) said that conscientious objection to abortion procedures was regulated by law. Objectors were explicitly required to refer patients to available services, and a failure to do so was a criminal offence. It was possible that patients omitted to report a failure to refer, but the law was very clear.

58. **Mr. Jeffery** (South Africa) said that, during a meeting held the previous day with South African civil society organizations, the delegation had requested detailed information as to which institutions had refused to perform abortions without providing referrals.

The meeting was suspended at 12.25 p.m. and resumed at 12.30 p.m.

59. **Mr. Jeffery** (South Africa) said that South African society was still quite far from a situation where the legacy and traces of apartheid could be considered to be behind it. Race relations would remain problematic as long as inequality in the country persisted along racial lines.

60. Gender-based violence and sexual offences remained serious problems. The Domestic Violence Act provided some level of protection for victims, including in the form of protection orders issued by a court, and dedicated "sexual offences courts" had been established to make it easier for survivors and victims to testify without fear of secondary victimization. Campaigns were regularly conducted against gender-based violence and sexual offences. At the request of civil society organizations, a summit had been convened by the President on the subject and would take place in late October 2018.

61. The Marriage Act, the Civil Union Act and the Customary Marriages Act governed marriage. There were no specific laws on Christian or Muslim marriage. Members of the clergy who performed religious marriage ceremonies were, however, encouraged to become official marriage officers registered with the Department of Home Affairs, which legalized the ceremonies they performed. In the wake of a recent court decision addressing the situation of persons who had been married in Muslim ceremonies in Western Cape Province, the authorities were considering the adoption of a unified law on marriage, inter alia to address the situation of persons who had in the past been married in religious ceremonies without official registration. Under the Children's Act, the age of consent to marriage was 18 years, except in cases where parents gave their consent and the Minister of Home Affairs agreed, in which case marriage could exceptionally take place from the age of 15 years.

62. South Africans were proud of their multicultural society, which embraced cultural differences. The application of European or North American morality was not necessarily appropriate in South African society. Practices such as virginity testing were a traditional part of Zulu culture, for instance. By law, only girls over the age of 16 could take part, and only if they consented. Polygamy existed in traditional African society and in many Muslim communities, and the Western Cape High Court's judgment addressing Muslim marriage had accepted the legality of polygamy. It would be wrong for the Committee to judge such practices as virginity testing and polygamy or to impose a certain type of morality without taking into consideration the traditions and history of the peoples of South Africa.

63. *Ukuthwala* was a practice linked to the payment of bride price, or *lobolo*. When the bride's and groom's families could not settle on a price, the couple often eloped. If there was no consent by either family, that amounted to an abduction and was clearly a criminal act, incurring heavy penalties. South African human trafficking legislation imposed severe sentences on anyone who forced someone to marry them for the purpose of making the spouse work. Even before the adoption of the current legislation, a person had been convicted and sentenced to 15 years of deprivation of liberty for such an act, and the sentence had been upheld on appeal, with participation by traditional leaders as friends of the court.

64. **Mr. Mkhize** (South Africa) said that, even in customary marriages, there were provisions for the protection of the woman, including prenuptial agreements on how to divide the family's estate and the requirement, in polygamous marriages, for the consent of the first wife. The Government had, after consultation with imams, adopted a programme to ensure that Muslim marriages were recognized, and it intended to implement the court decision recognizing Muslim marriages.

65. **Ms. Mxakato-Diseko** (South Africa) said that, without invoking cultural exceptionalism, she felt that an additional reason for the acceptance of virginity testing related to the HIV/AIDS pandemic. The official campaign to stop the spread of HIV/AIDS had included, among other things, calls for abstinence. One community had, on its own initiative, adopted virginity testing as a way of incentivizing abstinence among young people. However, its decision had led to an immediate outcry calling on that community to rethink its stance. She thus doubted that similar steps would be taken in the future.

66. It would be a mistake to say that the legacy of apartheid had been left behind. It was only the generation that had been raised since 1994 that had been raised in a context free from many of the constraints of apartheid. She herself had never visited white suburban areas prior to 1994, as doing so would have placed her in jeopardy of arrest for loitering, under the Vagrancy Act, owing solely to her race. The Government was of course committed to the Covenant and had adopted, for instance, unified education and health systems, ensuring equality of service, where previously, under apartheid, there had been none.

67. It should be remembered that many people had died to secure workers' rights, which were now more or less taken for granted. The legacy of apartheid could not be erased easily. She hoped the Committee would take into account the progress made by the country and the very serious challenge of how to effect a deep change in society, while giving some recommendations on how to proceed in the future.

68. **Mr. Jeffery** (South Africa) said the law stipulated that children had the right not to be subjected to social, cultural and religious practices that were detrimental to their well-being, that genital mutilation or circumcision of female children was prohibited, that virginity testing of children under the age of 16 was prohibited and could only be performed on children over 16 years of age with the child's consent after counselling, that results of such testing could not be disclosed without the child's consent, and that the body of a child who underwent virginity testing could not be marked.

69. **Mr. Mkhize** (South Africa) said that, although the delegation could not provide precise figures, it was clear that racial intermarriage occurred in South Africa. South African citizenship could be obtained either by birth, if one parent was South African; by descent, for example, in cases of adoption of foreign children by a South African parent; or through naturalization. According to a law passed in 2013, when foreign children born in

South Africa reached the age of 18 years, the age of majority, they were allowed to choose whether to accept South African citizenship. The law was not retroactive, and for those persons who had reached the age of 18 prior to its adoption, the previous rules still applied.

70. The challenges faced by South Africa were unique. Fraudulent birth registration had become a problem, as traffickers claiming to be parents, or even the children's parents themselves, lied to obtain citizenship for their children, sometimes with the aim of securing grants or other social benefits. It was in that context that the authorities had used DNA testing to verify that children registering as South African citizens were indeed the children of citizens. It was difficult otherwise to establish with any certainty the identity of children who were not born in hospitals or whose births were not immediately registered. DNA testing was thus used as a means of proving identity in cases of late registration of births.

71. The assessment of birth registry problems had revealed not only fraudulent registration of non-citizens, but also a problem whereby large numbers of South Africans failed to register their children. Efforts to encourage birth registration had had little effect, so the Government had issued a warning, calling for parents to register their children within a certain period, failing which there would be consequences. The Department of Home Affairs had not yet decided on the level of fines or fees that would be levied. The reason for the fees was not punitive; it was to ensure the integrity of the system and to build trust in the system for recognizing citizenship. The authorities wanted to work with civil society to ensure that, in accordance with the law, all births were registered. South African children who were registered were issued with an identity number. Foreign children were issued with birth certificates, which allowed their parents to apply for documentation from their countries of origin.

72. The national health laboratories and other laboratories that handled DNA tests had to be registered by the Government to ensure that test results were of high quality and not suspect. Parents could choose any laboratory, as long as it was certified to carry out the procedure.

The meeting rose at 1 p.m.